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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-754

LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LOUIS F. PEICK,
Petitioners,

vs.

JOHN DANIEL,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

SHERMAN CARMELL,
SHELDON M. CHARONE,
39 South LaSalle Street,
Chicago, Illinois 60603,
(312) 236-8033,
Attorneys for Petitioners.

Of Counsel:
CARMELL & CHARONE, LTD.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565 56

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Louis F. Peick respectfully pray that a writ of certiorari issues to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on August 20, 1977 in case no. 76-1855.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit appears at 561 F2d 1223 and is contained in a separate appendix (A.) at 1-53. The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, appears at 410 F. Supp. 541 and in the appendix at 56-80.

JURISDICTION.

The Court has jurisdiction under 28 USC § 1254(1). The judgment of the United States Court of Appeals for the Seventh Circuit was entered on August 20, 1977. Mr. Justice Stevens extended the time for filing the petition to November 25, 1977.

QUESTIONS PRESENTED.

Does an employee's coverage under an employer funded pension plan, as a compulsory incident of his employment, involve the "sale" of a "security" to the employee and hence a transaction subject to the federal securities laws? If so, can a cause of action be posited on each of the several antifraud provisions of those laws by one who alleges that there were material misrepresentations and failures to disclose in connection with such a "sale?"

STATUTES INVOLVED.

This case involves § 3(a)(10) and § 10(b) of the Securities and Exchange Act of 1934, 15 USC § 78c(a)(10) and § 78j (b); Rule 10b-5 of the Securities and Exchange Commission, 17 C.F.R. 240.10(b)-5; § 2(1), § 2(3), § 3(a)(2), and § 17 (a) of the Securities Act of 1933, 15 USC § 77b(1), § 77b(3) § 77c(a)(2), and § 77(q), reproduced in the appendix at 82-85.

STATEMENT OF THE CASE.

A. The Facts[1] Leading to the Respondent Filing a Fraud Suit Against the Petitioners.

In 1954 petitioner Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 705) and several multiemployer bargaining associations representing trucking employers domiciled in the Chicago, Illinois, area negotiated a collective bargaining agreement requiring each signator employer to contribute, effective January 1, 1955, "the sum of 5 cents for each hour of employment by each employee into a trust fund for the purpose of providing pension benefits to employees covered by this agreement." The trust agreement signed by these parties created the Local 705 International Brotherhood of Teamsters Pension Trust Fund (Local 705 Pension Fund) and vested in the board of trustees, composed equally of employee and employer representatives, exclusive and plenary authority to formulate and administer a pension plan and to control the trust.[2]

The trustees, with professional assistance, established and later modified both fixed retirement benefits and eligibility rules for their receipt. The trust agreement, pension plan and amendments were approved by the Internal Revenue Service for purposes of exemption under § 401(a) of the Internal Revenue

1. The facts are derived from respondent's complaint as amended; his affidavit and deposition; petitioners' motion to dismiss with exhibits including trust documents, pension plan booklets and correspondence; and the affidavit of A. S. Hansen, Inc., actuarial consultant to the Local 705 International Brotherhood of Teamsters Pension Trust Fund. Hansen's affidavit, which was not before the district court when it decided petitioners' motion to dismiss, was considered by the court of appeals (A. 29 n. 35, 50 n. 61).

2. The Local 705 Pension Fund is a noncontributory mandatory fund or plan, meaning that the plan benefits are funded by employer rather than employee contributions and employee participation in the plan is required by the collective bargaining agreement (A. 13-14, 35).